

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2893 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BAI NANDA WD/O KESHAVLAL C.

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner
NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/11/2000

ORAL JUDGEMENT

1. This petition was admitted on 24.4.1989, but till date no appearance has been put up on behalf of the respondents State of Gujarat and President, Gujarat Revenue Tribunal. Shri Premal Joshi, learned A.G.P.

states that he has no instruction to appear in the matter. As such Shri J.M.Patel, learned Counsel for the petitioner was heard and the impugned Judgment of the Gujarat Revenue Tribunal dated 7.7.1988 has been examined.

2. In the petition three prayers have been made by the petitioner, one is for quashing the Judgment of the Gujarat Revenue Tribunal (Annexure : F), the Judgment of the Collector (Annexure : D) and the Judgment of the Mamlatdar (Annexure : C). The second relief is for confirming the Judgment of the Mamlatdar dated 3.4.1971 (Annexure : A) and the last relief is for remanding the case to the Mamlatdar for deciding the same in accordance with law.

3. The proceedings for determination of surplus Agricultural land were taken by the Mamlatdar. It is averred that the petitioner is holding 36 Acres - 32.5 Gunthas Agricultural land. The ceiling area applicable is informed to be 36 Acres and in this way according to the petitioner 32.5 Gunthas land remained surplus which the petitioner is ready to part with in favour of the Government. However, the Mamlatdar initially declared that only 32.5 Gunthas land was surplus with the petitioner. The Mamlatdar further held that Survey No.838, 839 and 585 cannot be treated as irrigated land as it was irrigated through dirty sewage water. The Prant Officer revised this order of the Mamlatdar and by his order dated 5.5.1980 remanded the case to the Mamlatdar. After remand evidence was again taken. The Mamlatdar, however, obtained Certificate from the Executive Engineer for determining whether the aforesaid three plots were irrigated or not. The Certificate from the Executive Engineer was filed, but the petitioner was not permitted to cross examine the Engineer nor the Certificate was proved in accordance with law. Placing reliance upon the Certificate of the Executive Engineer the Mamlatdar through his order dated 7.6.1982 held that Survey Nos.839, 838 and 585 were irrigated land. Consequently he held that the petitioner was holding 5 Acres 13 Gunthas surplus land vide Annexure : C. The petitioner feeling aggrieved preferred Ceiling Appeal before the Deputy Collector which was dismissed on 22.8.1983 (Annexure : D). Thereafter the petitioner preferred revision before the Gujarat Revenue Tribunal. During pendency of the Revision before the Tribunal the petitioner moved an application on 21.6.1988 for permission to adduce additional evidence, namely, Birth Certificates of two daughters Savitaben and Shantaben and also resolution of the Corporation suggesting

discontinuation of the sewage water to the surrounding land. The Tribunal, however, refused to admit additional evidence by holding that in revision additional evidence cannot be admitted. According to the petitioner this view of the Tribunal was contrary to Regulation No.22 of Gujarat Revenue Tribunal Regulation. The revision was ultimately dismissed by the Tribunal on 7.7.1988 repelling the two objections of the petitioner that the land of Survey No.839 is not irrigated land and that the two daughters who were major on the specified date had share. Accordingly the Revision was dismissed. It is this order of the Tribunal which is under challenge.

4. Shri J.M.Patel, learned Counsel for the petitioner has argued that the Tribunal was in error in taking view that no additional evidence can be admitted in revision. For this he has referred to Regulation No.22 of the Bombay Revenue Tribunal. It provides that no party to an appeal or application shall be entitled to adduce fresh evidence whether oral or documentary before the Tribunal. The Tribunal may accept the documents tendered by a party or call for them if it is of the opinion that they are necessary for deciding the Appeal or Application provided that the other party in that case be entitled to produce rebuttal evidence. It is thus clear from this Regulation that a party to an Appeal or Application is not entitled as of right to adduce oral or documentary evidence. In no case oral evidence is to be admitted in Appeal or Application in view of Regulation 22. The revision is nothing but an application. Consequently in revision Application additional oral evidence cannot be permitted to be given by any party. However, so far as documentary evidence is concerned it can be admitted by the Tribunal if it is of the opinion that such documents are necessary for deciding the application including the revision application. It is therefore further clear that if the Tribunal is of the opinion that the documents tendered as additional evidence are necessary for deciding the revision effectively those documents can be admitted by the Tribunal. If such documents are admitted the other party has right to file documentary evidence in rebuttal. The view of the Tribunal, therefore, that in revision Application no additional documentary evidence can be accepted is contrary to Regulation No.22 aforesaid.

5. In Para : 9 of the petition it is mentioned that two Birth Certificates of two daughters Savitaben and Shantaben were proposed to be tendered as additional evidence for showing that these daughters were major on the relevant date and were entitled to share in the

property. The third document was resolution of the Corporation suggesting that discontinuation of sewage water rendered Survey No.839 non-irrigated land. These were the two points involved for consideration in revision, namely, whether two daughters were entitled to hold shares and whether Survey No.839 was irrigated or not. For deciding the first question the Birth Certificate was necessary and the Birth Certificate alone could show whether two daughters were major on the specified date or not. This document could be admitted by the Tribunal and the matter could have been decided after giving opportunity to adduce evidence in rebuttal to the other side. Since this was not done the Tribunal acted contrary to law and Regulation No.22 referred to above.

6. Likewise for deciding the second controversy whether Survey No.839 was irrigated land from perennial source or not, reliance was placed by the Mamlatdar on the Certificate of Executive Engineer. That Certificate was not proved by the Executive Engineer. There is some mention in the Judgment of the Tribunal, that the petitioner had stated that she has no objection if the Certificate of Executive engineer is admitted in evidence. However, this can not operate as estoppel from pleading that the Certificate was not proved in accordance with law or that she was not given an opportunity to rebut it by calling the Executing Engineer for cross examination. Subsequent resolution of the Corporation was also proposed to be tendered for showing that the so called water supply from the sewage was discontinued in pursuance of the Resolution of the Corporation. This would also require examination as to whether on the relevant date sewage facility was available or not for a period of 10 months and whether two crops were grown in a year. These material documents would have done substantial justice only when they were brought on record and it was determined as to what is the exact surplus land with the petitioner. Since this was not done the Judgment of the Tribunal cannot be sustained. It has therefore to be set aside.

7. The three reliefs claimed in the petition have been examined. If the order of the Tribunal is to be quashed then the order of the Deputy Collector and of the Mamlatdar passed after the remand as contained in Annexures : D & C respectively have also to be quashed. However, the second relief for confirming the order of the Mamlatdar (Annexure : A) dated 3.4.1977 cannot be granted because that would amount to finally deciding the case. The third relief however can be granted to which

Shri Patel has no objection and he prayed that the matter may be remanded to the Mamlatdar with direction to permit the petitioner to file additional documentary evidence, namely, copies of Birth Certificates of Savitaben and Shantaben and also resolution of the Corporation suggesting discontinuation of sewage water to Survey No.839.

8. In view of aforesaid discussion and offer made by Shri Patel the petition succeeds in part only. The impugned orders contained in Annexures : C, D & F are set aside. Ceiling Case is remanded to the Mamlatdar concerned with direction to permit the petitioner to file additional documentary evidence, namely, Birth Certificates of Savitaben and Shantaben and Resolution of the Corporation suggesting discontinuation of sewage water and also to permit her to file such evidence in rebuttal against the Certificate of Executive Engineer and if request is made the Executive Engineer may be called for properly proving his Certificate. The respondeents will be permitted to adduce evidence in rebuttal of additional evidence so filed. The Ceiling Case thereafter be decided expeditiously in accordance with law considering the additional documentary evidence adduced by the parties. No order as to costs.

sd/-

Date : November 21, 2000 (D. C. Srivastava, J.)

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